

Calendar No. 376

108TH CONGRESS
1ST SESSION**H. R. 1086**

IN THE SENATE OF THE UNITED STATES

JUNE 11, 2003

Received; read twice and referred to the Committee on the Judiciary

NOVEMBER 6, 2003

Reported by Mr. HATCH, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italie*]

AN ACT

To encourage the development and promulgation of voluntary consensus standards by providing relief under the anti-trust laws to standards development organizations with respect to conduct engaged in for the purpose of developing voluntary consensus standards, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Standards Develop-
5 ment Organization Advancement Act of 2003”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds the following:

3 (1) In 1993, the Congress amended and re-
4 named the National Cooperative Research Act of
5 1984 (now known as the National Cooperative Re-
6 search and Production Act of 1993 (15 U.S.C. 4301
7 et seq.)) by enacting the National Cooperative Pro-
8 duction Amendments of 1993 (Public Law 103-42)
9 to encourage the use of collaborative, procompetitive
10 activity in the form of research and production joint
11 ventures that provide adequate disclosure to the
12 antitrust enforcement agencies about the nature and
13 scope of the activity involved.

14 (2) Subsequently, in 1995, the Congress in en-
15 acting the National Technology Transfer and Ad-
16 vancement Act of 1995 (15 U.S.C. 272 note) recog-
17 nized the importance of technical standards devel-
18 oped by voluntary consensus standards bodies to our
19 national economy by requiring the use of such stand-
20 ards to the extent practicable by Federal agencies
21 and by encouraging Federal agency representatives
22 to participate in ongoing standards development ac-
23 tivities. The Office of Management and Budget on
24 February 18, 1998, revised Circular A-119 to re-
25 flect these changes made in law.

1 (3) Following enactment of the National Tech-
2 nology Transfer and Advancement Act of 1995,
3 technical standards developed or adopted by vol-
4 untary consensus standards bodies have replaced
5 thousands of unique Government standards and
6 specifications allowing the national economy to oper-
7 ate in a more unified fashion.

8 (4) Having the same technical standards used
9 by Federal agencies and by the private sector per-
10 mits the Government to avoid the cost of developing
11 duplicative Government standards and to more read-
12 ily use products and components designed for the
13 commercial marketplace, thereby enhancing quality
14 and safety and reducing costs.

15 (5) Technical standards are written by hun-
16 dreds of nonprofit voluntary consensus standards
17 bodies in a nonexclusionary fashion, using thousands
18 of volunteers from the private and public sectors,
19 and are developed under the standards development
20 principles set out in Circular Number A-119, as re-
21 vised February 18, 1998, of the Office of Manage-
22 ment and Budget, including principles that require
23 openness, balance, transparency, consensus, and due
24 process. Such principles provide for—

1 (A) notice to all parties known to be af-
2 fected by the particular standards development
3 activity;

4 (B) the opportunity to participate in
5 standards development or modification;

6 (C) balancing interests so that standards
7 development activities are not dominated by any
8 single group of interested persons;

9 (D) readily available access to essential in-
10 formation regarding proposed and final stand-
11 ards;

12 (E) the requirement that substantial
13 agreement be reached on all material points
14 after the consideration of all views and objec-
15 tions; and

16 (F) the right to express a position; to have
17 it considered; and to appeal an adverse decision.

18 (6) There are tens of thousands of voluntary
19 consensus standards available for government use.
20 Most of these standards are kept current through in-
21 terim amendments and interpretations; issuance of
22 addenda; and periodic reaffirmation, revision, or
23 reissuance every 3 to 5 years.

1 (7) Standards developed by government entities
2 generally are not subject to challenge under the anti-
3 trust laws.

4 (8) Private developers of the technical stand-
5 ards that are used as Government standards are
6 often not similarly protected, leaving such developers
7 vulnerable to being named as codefendants in law-
8 suits even though the likelihood of their being held
9 liable is remote in most cases, and they generally
10 have limited resources to defend themselves in such
11 lawsuits.

12 (9) Standards development organizations do not
13 stand to benefit from any antitrust violations that
14 might occur in the voluntary consensus standards
15 development process.

16 (10) As was the case with respect to research
17 and production joint ventures before the passage of
18 the National Cooperative Research and Production
19 Act of 1993, if relief from the threat of liability
20 under the antitrust laws is not granted to voluntary
21 consensus standards bodies, both regarding the de-
22 velopment of new standards and efforts to keep ex-
23 isting standards current, such bodies could be forced
24 to cut back on standards development activities at

1 great financial cost both to the Government and to
2 the national economy.

3 **SEC. 3. DEFINITIONS.**

4 Section 2 of the National Cooperative Research and
5 Production Act of 1993 (15 U.S.C. 4301) is amended—

6 (1) in subsection (a) by adding at the end the
7 following:

8 “(7) The term ‘standards development activity’
9 means any action taken by a standards development
10 organization for the purpose of developing, promul-
11 gating, revising, amending, reissuing, interpreting,
12 or otherwise maintaining a voluntary consensus
13 standard, or using such standard in conformity as-
14 sessment activities, including actions relating to the
15 intellectual property policies of the standards devel-
16 opment organization.

17 “(8) The term ‘standards development organi-
18 zation’ means a domestic or international organiza-
19 tion that plans, develops, establishes, or coordinates
20 voluntary consensus standards using procedures that
21 incorporate the attributes of openness, balance of in-
22 terests, due process, an appeals process, and con-
23 sensus in a manner consistent with the Office of
24 Management and Budget Circular Number A-119,
25 as revised February 10, 1998.

1 “(9) The term ‘technical standard’ has the
2 meaning given such term in section 12(d)(4) of the
3 National Technology Transfer and Advancement Act
4 of 1995.

5 “(10) The term ‘voluntary consensus standard’
6 has the meaning given such term in Office of Man-
7 agement and Budget Circular Number A-119, as re-
8 vised February 10, 1998.”; and

9 (2) by adding at the end the following:

10 “(c) The term ‘standards development activity’ ex-
11 cludes the following activities:

12 “(1) Exchanging information among competi-
13 tors relating to cost, sales, profitability, prices, mar-
14 keting, or distribution of any product, process, or
15 service that is not reasonably required for the pur-
16 pose of developing or promulgating a voluntary con-
17 sensus standard, or using such standard in con-
18 formity assessment activities.

19 “(2) Entering into any agreement or engaging
20 in any other conduct that would allocate a market
21 with a competitor.

22 “(3) Entering into any agreement or conspiracy
23 that would set or restrain prices of any good or serv-
24 ice.”.

1 **SEC. 4. RULE OF REASON STANDARD.**

2 Section 3 of the National Cooperative Research and
 3 Production Act of 1993 (15 U.S.C. 4302) is amended by
 4 striking “of any person in making or performing a con-
 5 tract to carry out a joint venture shall” and inserting the
 6 following: “of—

7 “(1) any person in making or performing a con-
 8 tract to carry out a joint venture; or

9 “(2) a standards development organization
 10 while engaged in a standards development activity,
 11 shall”.

12 **SEC. 5. LIMITATION ON RECOVERY.**

13 Section 4 of the National Cooperative Research and
 14 Production Act of 1993 (15 U.S.C. 4303) is amended—

15 (1) in subsections (a)(1), (b)(1), and (c)(1) by
 16 inserting “, or for a standards development activity
 17 engaged in by a standards development organization
 18 against which such claim is made” after “joint ven-
 19 ture”, and

20 (2) in subsection (e)—

21 (A) by inserting “, or of a standards devel-
 22 opment activity engaged in by a standards de-
 23 velopment organization” before the period at
 24 the end; and

25 (B) by redesignating such subsection as
 26 subsection (f); and

1 ~~(3)~~ by inserting after subsection (d) the fol-
 2 lowing:

3 ~~“(e) Subsections (a), (b), and (c) shall not be con-~~
 4 ~~strued to modify the liability under the antitrust laws of~~
 5 ~~any person (other than a standards development organiza-~~
 6 ~~tion) who—~~

7 ~~“(1) directly (or through an employee or agent)~~
 8 ~~participates in a standards development activity with~~
 9 ~~respect to which a violation of any of the antitrust~~
 10 ~~laws is found;~~

11 ~~“(2) is not a fulltime employee of the standards~~
 12 ~~development organization that engaged in such ac-~~
 13 ~~tivity; and~~

14 ~~“(3) is, or is an employee or agent of a person~~
 15 ~~who is, engaged in a line of commerce that is likely~~
 16 ~~to benefit directly from the operation of the stand-~~
 17 ~~ards development activity with respect to which such~~
 18 ~~violation is found.”.~~

19 **SEC. 6. ATTORNEY FEES.**

20 Section 5 of the National Cooperative Research and
 21 Production Act of 1993 (~~15 U.S.C. 4304~~) is amended—

22 (1) in subsection (a) by inserting “, or of a
 23 standards development activity engaged in by a
 24 standards development organization” after “joint
 25 venture”, and

1 (2) by adding at the end the following:

2 “(e) Subsections (a) and (b) shall not apply with re-
3 spect to any person who—

4 “(1) directly participates in a standards devel-
5 opment activity with respect to which a violation of
6 any of the antitrust laws is found;

7 “(2) is not a fulltime employee of a standards
8 development organization that engaged in such ac-
9 tivity; and

10 “(3) is, or is an employee or agent of a person
11 who is, engaged in a line of commerce that is likely
12 to benefit directly from the operation of the stand-
13 ards development activity with respect to which such
14 violation is found.”.

15 **SEC. 7. DISCLOSURE OF STANDARDS DEVELOPMENT AC-**
16 **TIVITY.**

17 Section 6 of the National Cooperative Research and
18 Production Act of 1993 (15 U.S.C. 4305) is amended—

19 (1) in subsection (a)—

20 (A) by redesignating paragraphs (1), (2),
21 and (3) as subparagraphs (A), (B), and (C), re-
22 spectively;

23 (B) by inserting “(1)” after “(a)”, and

24 (C) by adding at the end the following:

1 “(2) A standards development organization may, not
 2 later than 90 days after commencing a standards develop-
 3 ment activity engaged in for the purpose of developing or
 4 promulgating a voluntary consensus standards or not later
 5 than 90 days after the date of the enactment of the Stand-
 6 ards Development Organization Advancement Act of
 7 2003, whichever is later, file simultaneously with the At-
 8 torney General and the Commission, a written notification
 9 disclosing—

10 “(A) the name and principal place of business
 11 of the standards development organization, and

12 “(B) documents showing the nature and scope
 13 of such activity.

14 Any standards development organization may file addi-
 15 tional disclosure notifications pursuant to this section as
 16 are appropriate to extend the protections of section 4 to
 17 standards development activities that are not covered by
 18 the initial filing or that have changed significantly since
 19 the initial filing.”

20 (2) in subsection (b)—

21 (A) in the 1st sentence by inserting “; or
 22 a notice with respect to such standards develop-
 23 ment activity that identifies the standards de-
 24 velopment organization engaged in such activity

1 and that describes such activity in general
2 terms” before the period at the end, and

3 ~~(B)~~ in the last sentence by inserting “or
4 available to such organization, as the case may
5 be” before the period,

6 ~~(3)~~ in subsection ~~(d)~~(2) by inserting “, or the
7 standards development activity,” after “venture”,

8 ~~(4)~~ in subsection ~~(e)~~—

9 ~~(A)~~ by striking “person who” and inserting
10 “person or standards development organization
11 that”, and

12 ~~(B)~~ by inserting “or any standards devel-
13 opment organization” after “person” the last
14 place it appears, and

15 ~~(5)~~ in subsection ~~(g)~~(1) by inserting “or stand-
16 ards development organization” after “person”.

17 **SEC. 8. RULE OF CONSTRUCTION.**

18 Nothing in this Act shall be construed to alter or
19 modify the antitrust treatment under existing law of—

20 (1) parties participating in standards develop-
21 ment activity of standards development organiza-
22 tions within the scope of this Act, or

23 (2) other organizations and parties engaged in
24 standard-setting processes not within the scope of
25 this amendment to the Act.

1 **TITLE I—STANDARDS DEVELOP-**
2 **MENT ORGANIZATION AD-**
3 **VANCEMENT ACT OF 2003**

4 **SEC. 101. SHORT TITLE.**

5 *This title may be cited as the “Standards Development*
6 *Organization Advancement Act of 2003”.*

7 **SEC. 102. FINDINGS.**

8 *The Congress finds the following:*

9 *(1) In 1993, the Congress amended and renamed*
10 *the National Cooperative Research Act of 1984 (now*
11 *known as the National Cooperative Research and Pro-*
12 *duction Act of 1993 (15 U.S.C. 4301 et seq.)) by en-*
13 *acting the National Cooperative Production Amend-*
14 *ments of 1993 (Public Law 103–42) to encourage the*
15 *use of collaborative, procompetitive activity in the*
16 *form of research and production joint ventures that*
17 *provide adequate disclosure to the antitrust enforce-*
18 *ment agencies about the nature and scope of the activ-*
19 *ity involved.*

20 *(2) Subsequently, in 1995, the Congress in enact-*
21 *ing the National Technology Transfer and Advance-*
22 *ment Act of 1995 (15 U.S.C. 272 note) recognized the*
23 *importance of technical standards developed by vol-*
24 *untary consensus standards bodies to our national*
25 *economy by requiring the use of such standards to the*

1 *extent practicable by Federal agencies and by encour-*
2 *aging Federal agency representatives to participate in*
3 *ongoing standards development activities. The Office*
4 *of Management and Budget on February 18, 1998, re-*
5 *vised Circular A–119 to reflect these changes made in*
6 *law.*

7 *(3) Following enactment of the National Tech-*
8 *nology Transfer and Advancement Act of 1995, tech-*
9 *nical standards developed or adopted by voluntary*
10 *consensus standards bodies have replaced thousands of*
11 *unique Government standards and specifications al-*
12 *lowing the national economy to operate in a more*
13 *unified fashion.*

14 *(4) Having the same technical standards used by*
15 *Federal agencies and by the private sector permits the*
16 *Government to avoid the cost of developing duplica-*
17 *tive Government standards and to more readily use*
18 *products and components designed for the commercial*
19 *marketplace, thereby enhancing quality and safety*
20 *and reducing costs.*

21 *(5) Technical standards are written by hundreds*
22 *of nonprofit voluntary consensus standards bodies in*
23 *a nonexclusionary fashion, using thousands of volun-*
24 *teers from the private and public sectors, and are de-*
25 *veloped under the standards development principles*

1 *set out in Circular Number A-119, as revised Feb-*
2 *ruary 18, 1998, of the Office of Management and*
3 *Budget, including principles that require openness,*
4 *balance, transparency, consensus, and due process.*
5 *Such principles provide for—*

6 *(A) notice to all parties known to be af-*
7 *ected by the particular standards development*
8 *activity,*

9 *(B) the opportunity to participate in stand-*
10 *ards development or modification,*

11 *(C) balancing interests so that standards*
12 *development activities are not dominated by any*
13 *single group of interested persons,*

14 *(D) readily available access to essential in-*
15 *formation regarding proposed and final stand-*
16 *ards,*

17 *(E) the requirement that substantial agree-*
18 *ment be reached on all material points after the*
19 *consideration of all views and objections, and*

20 *(F) the right to express a position, to have*
21 *it considered, and to appeal an adverse decision.*

22 *(6) There are tens of thousands of voluntary con-*
23 *sensus standards available for government use. Most*
24 *of these standards are kept current through interim*
25 *amendments and interpretations, issuance of ad-*

1 *denda, and periodic reaffirmation, revision, or*
2 *reissuance every 3 to 5 years.*

3 *(7) Standards developed by government entities*
4 *generally are not subject to challenge under the anti-*
5 *trust laws.*

6 *(8) Private developers of the technical standards*
7 *that are used as Government standards are often not*
8 *similarly protected, leaving such developers vulnerable*
9 *to being named as codefendants in lawsuits even*
10 *though the likelihood of their being held liable is re-*
11 *mote in most cases, and they generally have limited*
12 *resources to defend themselves in such lawsuits.*

13 *(9) Standards development organizations do not*
14 *stand to benefit from any antitrust violations that*
15 *might occur in the voluntary consensus standards de-*
16 *velopment process.*

17 *(10) As was the case with respect to research and*
18 *production joint ventures before the passage of the Na-*
19 *tional Cooperative Research and Production Act of*
20 *1993, if relief from the threat of liability under the*
21 *antitrust laws is not granted to voluntary consensus*
22 *standards bodies, both regarding the development of*
23 *new standards and efforts to keep existing standards*
24 *current, such bodies could be forced to cut back on*
25 *standards development activities at great financial*

1 *cost both to the Government and to the national econ-*
2 *omy.*

3 **SEC. 103. DEFINITIONS.**

4 *Section 2 of the National Cooperative Research and*
5 *Production Act of 1993 (15 U.S.C. 4301) is amended—*

6 *(1) in subsection (a) by adding at the end the*
7 *following:*

8 *“(7) The term ‘standards development activity’*
9 *means any action taken by a standards development*
10 *organization for the purpose of developing, promul-*
11 *gating, revising, amending, reissuing, interpreting, or*
12 *otherwise maintaining a voluntary consensus stand-*
13 *ard, or using such standard in conformity assessment*
14 *activities, including actions relating to the intellec-*
15 *tual property policies of the standards development*
16 *organization.*

17 *“(8) The term ‘standards development organiza-*
18 *tion’ means a domestic or international organization*
19 *that plans, develops, establishes, or coordinates vol-*
20 *untary consensus standards using procedures that in-*
21 *corporate the attributes of openness, balance of inter-*
22 *ests, due process, an appeals process, and consensus in*
23 *a manner consistent with the Office of Management*
24 *and Budget Circular Number A–119, as revised Feb-*
25 *ruary 10, 1998.*

1 “(9) The term ‘technical standard’ has the mean-
2 ing given such term in section 12(d)(4) of the Na-
3 tional Technology Transfer and Advancement Act of
4 1995.

5 “(10) The term ‘voluntary consensus standard’
6 has the meaning given such term in Office of Manage-
7 ment and Budget Circular Number A–119, as revised
8 February 10, 1998.”; and

9 (2) by adding at the end the following:

10 “(c) The term ‘standards development activity’ ex-
11 cludes the following activities:

12 “(1) Exchanging information among competitors
13 relating to cost, sales, profitability, prices, marketing,
14 or distribution of any product, process, or service that
15 is not reasonably required for the purpose of devel-
16 oping or promulgating a voluntary consensus stand-
17 ard, or using such standard in conformity assessment
18 activities.

19 “(2) Entering into any agreement or engaging
20 in any other conduct that would allocate a market
21 with a competitor.

22 “(3) Entering into any agreement or conspiracy
23 that would set or restrain prices of any good or serv-
24 ice.”.

1 **SEC. 104. RULE OF REASON STANDARD.**

2 *Section 3 of the National Cooperative Research and*
 3 *Production Act of 1993 (15 U.S.C. 4302) is amended by*
 4 *striking “of any person in making or performing a contract*
 5 *to carry out a joint venture shall” and inserting the fol-*
 6 *lowing: “of—*

7 *“(1) any person in making or performing a con-*
 8 *tract to carry out a joint venture, or*

9 *“(2) a standards development organization while*
 10 *engaged in a standards development activity,*
 11 *shall”.*

12 **SEC. 105. LIMITATION ON RECOVERY.**

13 *Section 4 of the National Cooperative Research and*
 14 *Production Act of 1993 (15 U.S.C. 4303) is amended—*

15 *(1) in subsections (a)(1), (b)(1), and (c)(1) by*
 16 *inserting “, or for a standards development activity*
 17 *engaged in by a standards development organization*
 18 *against which such claim is made” after “joint ven-*
 19 *ture”, and*

20 *(2) in subsection (e)—*

21 *(A) by inserting “, or of a standards devel-*
 22 *opment activity engaged in by a standards devel-*
 23 *opment organization” before the period at the*
 24 *end, and*

25 *(B) by redesignating such subsection as sub-*
 26 *section (f), and*

1 (3) by inserting after subsection (d) the fol-
 2 lowing:

3 “(e) Subsections (a), (b), and (c) shall not be construed
 4 to modify the liability under the antitrust laws of any per-
 5 son (other than a standards development organization)
 6 who—

7 “(1) directly (or through an employee or agent)
 8 participates in a standards development activity with
 9 respect to which a violation of any of the antitrust
 10 laws is found,

11 “(2) is not a fulltime employee of the standards
 12 development organization that engaged in such activ-
 13 ity, and

14 “(3) is, or is an employee or agent of a person
 15 who is, engaged in a line of commerce that is likely
 16 to benefit directly from the operation of the standards
 17 development activity with respect to which such viola-
 18 tion is found.”.

19 **SEC. 106. ATTORNEY FEES.**

20 Section 5 of the National Cooperative Research and
 21 Production Act of 1993 (15 U.S.C. 4304) is amended—

22 (1) in subsection (a) by inserting “, or of a
 23 standards development activity engaged in by a
 24 standards development organization” after “joint ven-
 25 ture”, and

1 (2) *by adding at the end the following:*

2 “(c) Subsections (a) and (b) shall not apply with re-
3 *spect to any person who—*

4 “(1) *directly participates in a standards devel-*
5 *opment activity with respect to which a violation of*
6 *any of the antitrust laws is found,*

7 “(2) *is not a fulltime employee of a standards*
8 *development organization that engaged in such activ-*
9 *ity, and*

10 “(3) *is, or is an employee or agent of a person*
11 *who is, engaged in a line of commerce that is likely*
12 *to benefit directly from the operation of the standards*
13 *development activity with respect to which such viola-*
14 *tion is found.”.*

15 **SEC. 107. DISCLOSURE OF STANDARDS DEVELOPMENT AC-**
16 **TIVITY.**

17 *Section 6 of the National Cooperative Research and*
18 *Production Act of 1993 (15 U.S.C. 4305) is amended—*

19 *(1) in subsection (a)—*

20 *(A) by redesignating paragraphs (1), (2),*
21 *and (3) as subparagraphs (A), (B), and (C), re-*
22 *spectively,*

23 *(B) by inserting “(1)” after “(a)”, and*

24 *(C) by adding at the end the following:*

1 “(2) *A standards development organization may, not*
2 *later than 90 days after commencing a standards develop-*
3 *ment activity engaged in for the purpose of developing or*
4 *promulgating a voluntary consensus standards or not later*
5 *than 90 days after the date of the enactment of the Stand-*
6 *ards Development Organization Advancement Act of 2003,*
7 *whichever is later, file simultaneously with the Attorney*
8 *General and the Commission, a written notification dis-*
9 *closing—*

10 “(A) *the name and principal place of business of*
11 *the standards development organization, and*

12 “(B) *documents showing the nature and scope of*
13 *such activity.*

14 *Any standards development organization may file addi-*
15 *tional disclosure notifications pursuant to this section as*
16 *are appropriate to extend the protections of section 4 to*
17 *standards development activities that are not covered by the*
18 *initial filing or that have changed significantly since the*
19 *initial filing.”,*

20 (2) *in subsection (b)—*

21 (A) *in the 1st sentence by inserting “, or a*
22 *notice with respect to such standards develop-*
23 *ment activity that identifies the standards devel-*
24 *opment organization engaged in such activity*

1 *and that describes such activity in general*
 2 *terms” before the period at the end, and*

3 *(B) in the last sentence by inserting “or*
 4 *available to such organization, as the case may*
 5 *be” before the period,*

6 *(3) in subsection (d)(2) by inserting “, or the*
 7 *standards development activity,” after “venture”,*

8 *(4) in subsection (e)—*

9 *(A) by striking “person who” and inserting*
 10 *“person or standards development organization*
 11 *that”, and*

12 *(B) by inserting “or any standards develop-*
 13 *ment organization” after “person” the last place*
 14 *it appears, and*

15 *(5) in subsection (g)(1) by inserting “or stand-*
 16 *ards development organization” after “person”.*

17 **SEC. 108. RULE OF CONSTRUCTION.**

18 *Nothing in this title shall be construed to alter or mod-*
 19 *ify the antitrust treatment under existing law of—*

20 *(1) parties participating in standards develop-*
 21 *ment activity of standards development organizations*
 22 *within the scope of this title, or*

23 *(2) other organizations and parties engaged in*
 24 *standard-setting processes not within the scope of this*
 25 *amendment to the title.*

1 **TITLE II—ANTITRUST CRIMINAL**
 2 **PENALTY ENHANCEMENT AND**
 3 **REFORM ACT OF 2003**

4 **SEC. 201. SHORT TITLE.**

5 *This title may be cited as the “Antitrust Criminal*
 6 *Penalty Enhancement and Reform Act of 2003”.*

7 **Subtitle A—Antitrust Enforcement**
 8 **Enhancements and Cooperation**
 9 **Incentives**

10 **SEC. 211. SUNSET.**

11 *(a) IN GENERAL.—Except as provided in subsection*
 12 *(b), the provisions of sections 211 through 214 shall cease*
 13 *to have effect 5 years after the date of enactment of this*
 14 *Act.*

15 *(b) EXCEPTION.—With respect to an applicant who*
 16 *has entered into an antitrust leniency agreement on or be-*
 17 *fore the date on which the provisions of sections 211 through*
 18 *214 of this subtitle shall cease to have effect, the provisions*
 19 *of sections 211 through 214 of this subtitle shall continue*
 20 *in effect.*

21 **SEC. 212. DEFINITIONS.**

22 *In this subtitle:*

23 *(1) ANTITRUST DIVISION.—The term “Antitrust*
 24 *Division” means the United States Department of*
 25 *Justice Antitrust Division.*

1 (2) *ANTITRUST LENIENCY AGREEMENT.*—The
2 term “antitrust leniency agreement,” or “agreement,”
3 means a leniency letter agreement, whether condi-
4 tional or final, between a person and the Antitrust
5 Division pursuant to the Corporate Leniency Policy
6 of the Antitrust Division in effect on the date of exe-
7 cution of the agreement.

8 (3) *ANTITRUST LENIENCY APPLICANT.*—The term
9 “antitrust leniency applicant,” or “applicant,”
10 means, with respect to an antitrust leniency agree-
11 ment, the person that has entered into the agreement.

12 (4) *CLAIMANT.*—The term “claimant” means a
13 person or class, that has brought, or on whose behalf
14 has been brought, a civil action alleging a violation
15 of section 1 or 3 of the Sherman Act or any similar
16 State law, except that the term does not include a
17 State or a subdivision of a State with respect to a
18 civil action brought to recover damages sustained by
19 the State or subdivision.

20 (5) *COOPERATING INDIVIDUAL.*—The term “co-
21 operating individual” means, with respect to an anti-
22 trust leniency agreement, a current or former direc-
23 tor, officer, or employee of the antitrust leniency ap-
24 plicant who is covered by the agreement.

1 (6) *PERSON*.—The term “person” has the mean-
 2 ing given it in subsection (a) of the first section of the
 3 Clayton Act.

4 **SEC. 213. LIMITATION ON RECOVERY.**

5 (a) *IN GENERAL*.—Subject to subsection (d), in any
 6 civil action alleging a violation of section 1 or 3 of the Sher-
 7 man Act, or alleging a violation of any similar State law,
 8 based on conduct covered by a currently effective antitrust
 9 leniency agreement, the amount of damages recovered by or
 10 on behalf of a claimant from an antitrust leniency appli-
 11 cant who satisfies the requirements of subsection (b), to-
 12 gether with the amounts so recovered from cooperating indi-
 13 viduals who satisfy such requirements, shall not exceed that
 14 portion of the actual damages sustained by such claimant
 15 which is attributable to the commerce done by the applicant
 16 in the goods or services affected by the violation.

17 (b) *REQUIREMENTS*.—Subject to subsection (c), an
 18 antitrust leniency applicant or cooperating individual sat-
 19 isfies the requirements of this subsection with respect to a
 20 civil action described in subsection (a) if the court in which
 21 the civil action is brought determines, after considering any
 22 appropriate pleadings from the claimant, that the appli-
 23 cant or cooperating individual, as the case may be, has pro-
 24 vided satisfactory cooperation to the claimant with respect
 25 to the civil action, which cooperation shall include—

1 (1) *providing a full account to the claimant of*
2 *all facts known to the applicant or cooperating indi-*
3 *vidual, as the case may be, that are potentially rel-*
4 *evant to the civil action;*

5 (2) *furnishing all documents or other items po-*
6 *tentially relevant to the civil action that are in the*
7 *possession, custody, or control of the applicant or co-*
8 *operating individual, as the case may be, wherever*
9 *they are located; and*

10 (3)(A) *in the case of a cooperating individual—*

11 (i) *making himself or herself available for*
12 *such interviews, depositions, or testimony in con-*
13 *nection with the civil action as the claimant*
14 *may reasonably require; and*

15 (ii) *responding completely and truthfully,*
16 *without making any attempt either falsely to*
17 *protect or falsely to implicate any person or en-*
18 *tity, and without intentionally withholding any*
19 *potentially relevant information, to all questions*
20 *asked by the claimant in interviews, depositions,*
21 *trials, or any other court proceedings in connec-*
22 *tion with the civil action; or*

23 (B) *in the case of an antitrust leniency appli-*
24 *cant, using its best efforts to secure and facilitate*
25 *from cooperating individuals covered by the agree-*

1 *ment the cooperation described in clauses (i) and (ii)*
 2 *and subparagraph (A).*

3 (c) *TIMELINES.*—*If the initial contact by the antitrust*
 4 *leniency applicant with the Antitrust Division regarding*
 5 *conduct covered by the antitrust leniency agreement occurs*
 6 *after a civil action described in subsection (a) has been*
 7 *filed, then the court shall consider, in making the deter-*
 8 *mination concerning satisfactory cooperation described in*
 9 *subsection (b), the timeliness of the applicant’s initial co-*
 10 *operation with the claimant.*

11 (d) *CONTINUATION.*—*Nothing in this section shall be*
 12 *construed to modify, impair, or supersede the provisions of*
 13 *sections 4, 4A, and 4C of the Clayton Act relating to the*
 14 *recovery of costs of suit, including a reasonable attorney’s*
 15 *fee, and interest on damages, to the extent that such recov-*
 16 *ery is authorized by such sections.*

17 **SEC. 214. RIGHTS AND AUTHORITY OF ANTITRUST DIVISION**
 18 **NOT AFFECTED.**

19 *Nothing in this subtitle shall be construed to—*

20 (1) *affect the rights of the Antitrust Division to*
 21 *seek a stay or protective order in a civil action based*
 22 *on conduct covered by an antitrust leniency agree-*
 23 *ment to prevent the cooperation described in section*
 24 *213(b) from impairing or impeding the investigation*

1 or prosecution by the Antitrust Division of conduct
2 covered by the agreement; or

3 (2) create any right to challenge any decision by
4 the Antitrust Division with respect to an antitrust le-
5 nency agreement.

6 **SEC. 215. INCREASED PENALTIES FOR ANTITRUST VIOLA-**
7 **TIONS.**

8 (a) *RESTRAINT OF TRADE AMONG THE STATES.*—Sec-
9 tion 1 of the Sherman Act (15 U.S.C. 1) is amended by—

10 (1) striking “\$10,000,000” and inserting
11 “\$100,000,000”;

12 (2) striking “\$350,000” and inserting
13 “\$1,000,000”; and

14 (3) striking “three” and inserting “10”.

15 (b) *MONOPOLIZING TRADE.*—Section 2 of the Sherman
16 Act (15 U.S.C. 2) is amended by—

17 (1) striking “\$10,000,000” and inserting
18 “\$100,000,000”;

19 (2) striking “\$350,000” and inserting
20 “\$1,000,000”; and

21 (3) striking “three” and inserting “10”.

22 (c) *OTHER RESTRAINTS OF TRADE.*—Section 3 of the
23 Sherman Act (15 U.S.C. 3) is amended by—

24 (1) striking “\$10,000,000” and inserting
25 “\$100,000,000”;

1 (2) striking “\$350,000” and inserting
2 “\$1,000,000”; and

3 (3) striking “three” and inserting “10”.

4 ***Subtitle B—Tunney Act Reform***

5 ***SEC. 221. PUBLIC INTEREST DETERMINATION.***

6 Section 5 of the Clayton Act (15 U.S.C. 16) is amend-
7 ed—

8 (1) in subsection (d), by inserting at the end the
9 following: “Upon application by the United States,
10 the district court may, for good cause (based on a
11 finding that the expense of publication in the Federal
12 Register exceeds the public interest benefits to be
13 gained from such publication), authorize an alter-
14 native method of public dissemination of the public
15 comments received and the response to those com-
16 ments.”; and

17 (2) in subsection (e)—

18 (A) in the matter before paragraph (1),
19 by—

20 (i) inserting “independently” after
21 “shall”;

22 (ii) striking “court may” and insert-
23 ing “court shall”; and

24 (iii) inserting “(1)” before “Before”;
25 and

1 (B) striking paragraphs (1) and (2) and in-
2 serting the following:

3 “(A) the competitive impact of such judgment,
4 including termination of alleged violations, provisions
5 for enforcement and modification, duration of relief
6 sought, anticipated effects of alternative remedies ac-
7 tually considered, whether its terms are ambiguous
8 and any other competitive considerations bearing
9 upon the adequacy of such judgment necessary to a
10 determination of whether the consent judgment is in
11 the public interest; and

12 “(B) the impact of entry of such judgment upon
13 competition in the relevant market or markets, upon
14 the public generally and individuals alleging specific
15 injury from the violations set forth in the complaint
16 including consideration of the public benefit, if any,
17 to be derived from a determination of the issues at
18 trial.

19 “(2) The Court shall not enter any consent judgment
20 proposed by the United States under this section unless it
21 finds that there is reasonable belief, based on substantial
22 evidence and reasoned analysis, to support the United
23 States’ conclusion that the consent judgment is in the public
24 interest. In making its determination as to whether entry
25 of the consent judgment is in the public interest, the Court

1 *shall not be limited to examining only the factors set forth*
2 *in this subsection, but may consider any other factor rel-*
3 *evant to the competitive impact of the judgment.”.*

Calendar No. 376

108TH CONGRESS
1ST SESSION

H. R. 1086

AN ACT

To encourage the development and promulgation of voluntary consensus standards by providing relief under the antitrust laws to standards development organizations with respect to conduct engaged in for the purpose of developing voluntary consensus standards, and for other purposes.

NOVEMBER 6, 2003

Reported with an amendment